



28 JUL 2006

Joerg-Uwe Szipl
Griffin & Szipl, P.C.
2300 Ninth Street South, Suite PH-1
Arlington, VA 22204

In re Application of :
HATA et al. :
Application No.: 10/538,776 :
PCT No.: PCT/JP04/00055 :
Int. Filing Date: 08 January 2004 :
Priority Date: 09 January 2003 :
Attorney Docket No.: ASAIN0164 :
For: GRADIENT STRUCTURE MATERIAL :
AND FUNCTIONAL ELEMENT USING :
THE SAME :

DECISION ON
PAPERS UNDER 37 CFR 1.42

This decision is issued in response to the declaration filed 17 April 2006 which is being treated as a request under 37 CFR 1.42. No petition fee is required.

BACKGROUND

On 08 January 2004, applicants filed the above-identified international application which claimed a priority date of 09 January 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire 30 months from the priority date, 09 July 2005.

On 10 June 2005, applicants filed a transmittal letter for entry into the national stage in the United States accompanied, inter alia, by: the basic national fee; a copy of the international application; an English translation of the international application; and a declaration executed by Tomonobu Hata, Kimihiro Sasaki and the legal representative on behalf of deceased inventor Shinichi Morita. In a decision dated 15 February 2006, the petition under 37 CFR 1.42 was refused.

On 17 April 2006, applicants filed the present renewed request under 37 CFR 1.42.

DISCUSSION

37 CFR 1.42 *When the Inventor is Dead*, states, in part:

In case of the death of the inventor, the legal representative (executor, administrator, etc.) of the deceased inventor may make the necessary oath or declaration, and apply for and obtain the patent.

The declaration submitted on 17 April 2006 is executed by Kimiko Morita as the "legal representative" of the deceased inventor, Shinichi Morita. The declaration provides the residence, post office address, and country of citizenship for the legal representative and the citizenship of the deceased inventor. Therefore, the declaration is acceptable under 37 CFR 1.42 and complies with 37 CFR 1.497(a)-(b).

CONCLUSION

The papers filed under 37 CFR 1.42 are ACCEPTED.

The application has an international filing date of 08 January 2004, under 35 U.S.C. 363, and a 35 U.S.C. 371(c) date of **17 April 2006**.

This application is being forwarded to the National Stage Processing Branch of the International Division for continued national stage processing.


Anthony Smith
Attorney-Advisor
Office of PCT Legal Administration
Tel: (571) 272-3298
Fax: (571) 273-0459